

**IN THE UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF MISSOURI  
CENTRAL DIVISION**

ERIC MIZE, Register No. 1063768,	)	
SHAHEED MUSLIM HABEEBULLAH,	)	
Register No. 519490,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	No. 08-4063-CV-C-NKL
	)	
LARRY CRAWFORD, et al.,	)	
	)	
Defendants.	)	

**REPORT, RECOMMENDATION AND ORDER**

On July 9, 2008, plaintiff Eric Mize filed a motion seeking to dismiss his claims. Defendants' response indicates they do not object to plaintiff's motion. Plaintiff's motion should be granted.<sup>1</sup>

Plaintiff Mize's request for relinquishment of responsibility for continued payments toward the remaining balance of the filing fee in this case, however, is denied. Plaintiff remains jointly responsible with co-plaintiff Shaheed Muslin Habeebullah for the payment of the filing fee in this case, as set forth 28 U.S.C. § 1915.

In light of plaintiff Mize's withdrawal from the case, his motion for return of legal materials is denied as moot.

In response to Mize's motion to withdraw, co-plaintiff Habeebullah requested a face-to-face meeting with Mize. Defendants advise that Habeebullah is in protective custody and Mize is in administrative segregation; therefore, because of safety and security concerns, and pursuant to prison policy, they are not allowed to have physical contact with each other. Upon review, the court denies Habeebullah's motion seeking consultation/face-to-face contact with Mize.

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<sup>1</sup>This case was referred to the undersigned United States Magistrate Judge for processing in accord with the Magistrate Act, 28 U.S.C. § 636, and L.R. 72.1.

In response to Mize's withdrawal, co-plaintiff Habeebullah, on August 20, 2008, filed a motion to amend. Defendants have not filed objections, but have filed a request for an extension of time to respond to discovery already submitted by Habeebullah, citing, in part, Habeebullah's intent to amend his complaint. Plaintiff's motion to amend is granted and his proposed amended complaint shall be reflected as an Amended Complaint on the court's docket sheet. The May 27, 2008, motion to amend, filed prior to Mize's withdrawal, is denied as moot. The motions for discovery and service of process filed on June 13, 2008, are also denied as moot because the defendants listed in the motions are no longer identified as defendants in the amended complaint. Pursuant to the amended complaint, plaintiffs' claims against defendants Arthur Wood, Jay Cassady, Rebecca Taylor, Stanley Swiccord, Tami Surface, Jacob R. Maples, Olan Salzer, Norman Graham, Tony Sheehan, Jennifer Duty-Matsko, Richard Martin, Bales, Brown Morton, Henry Jackson, Wendell Enloe, Charles Turner, Jim Crosby, Charlie Verdugo and Rebecca Bainbridge are dismissed. Identified defendants in the amended complaint are Larry Crawford, Steve Long, Mike Kemna, Dave Dormire, and Bill Galloway. The court's docket sheet is to be modified to reflect these changes.

Plaintiff Habeebullah filed a motion for appointment counsel on July 14, 2008. Plaintiff's previous requests have been denied, most recently on April 30, 2008. A review of the record does not reveal a significant change in circumstances since that time. Accordingly, for the reasons previously set forth, plaintiff's motion will be denied.

IT IS, THEREFORE, ORDERED that plaintiff Habeebullah's July 14, 2008 motion for appointment of counsel is denied, without prejudice. [38] It is further

ORDERED that plaintiff Habeebullah's August 20, 2008 motion to amend is granted, and the clerk of court is directed to file the proposed amended complaint, and modify the defendants named on the docket sheet as set out above. [46] It is further

ORDERED that plaintiff Habeebullah's motion for face-to-face consultation with co-plaintiff Mize is denied. [39] It is further

ORDERED that plaintiffs' May 27, 2008 motion to amend, and plaintiff Mize's motion for order for return of legal materials, for discovery, and for service of process are denied as moot. [25, 27, 30, 31] It is further

ORDERED that defendants are granted an extension of time until October 2, 2008, in which to file their discovery responses. [47] It is further

RECOMMENDED that defendant Mize's motion to dismiss his claims be granted.  
[37]

Under 28 U.S.C. § 636(b)(1), the parties may make specific written exceptions to this recommendation within twenty days. The District Judge will consider only exceptions to the specific proposed findings and recommendations of this report. Exceptions should not include matters outside of the report and recommendation. Other matters should be addressed in a separate pleading for consideration by the Magistrate Judge.

The statute provides for exceptions to be filed within ten days of the service of the report and recommendation. The court has extended that time to twenty days, and thus, additional time to file exceptions will not be granted unless there are exceptional circumstances. Failure to make specific written exceptions to this report and recommendation will result in a waiver of the right to appeal. See L.R. 74.1(a)(2).

Dated this 10<sup>th</sup> day of September, 2008, at Jefferson City, Missouri.

/s/ William A. Knox

WILLIAM A. KNOX  
United States Magistrate Judge